IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 4714 of 2004

RAJESH & ANR.
V/S
CIVIL JUDGE,(S.D.)(RENT TRIBUNAL)& ORS.

Mr. LALIT KAWADIA, for the appellant / petitioner

Mr. SURESH SHRIMALI (CAVEATOR, for the respondent

Date of Order : 8.11.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial Court has dismissed the petitioners' application for being impleaded as party, by coming to the conclusion that the petitioners do not fall within the definition of 'tenant', as given in Section 2 of the Rent Control Act, 2001.

Learned counsel for the petitioner contends that the landlord has earlier filed a suit for eviction, being Suit No.19 of 2002, wherein, the petitioners filed application for being impleaded as party, which was allowed on 5.2.2003, but then thereafter, the plaintiff withdrew that suit with liberty to file the fresh suit in accordance with the provisions of the Rent Control Act, 2001, and therefore, in view of the order passed in earlier suit, the petitioners' application could not have been dismissed.

I have considered the submissions.

According to the petitioners, they are in actual physical possession of the shop. The suit is for eviction against the tenant. If the plaintiff wants to take possession of the premises, consequent upon the decree for eviction, the persons in possession, who have come forward to project their right to remain in possession, and who had been ordered to be impleaded as parties in the previous suit for eviction based on this very cause of action, which had been withdrawn, obviously have to be heard.

In these circumstances, I am inclined to set aside the impugned order, and to direct the learned trial Court to implead the petitioners as party respondent. The petitioners will be free to file their written-statement, and the learned trial Court will determine their right to

remain in possession afresh in accordance with law without in any manner being obsessed by the impugned order dated 20.8.2004. Since the suit is very old, the learned trial Court is directed to expeditiously decide the matter.

The writ petition is, accordingly, allowed in the above terms.

/tarun/ (N P GUPTA),J.